

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA, COLUMBUS DIVISION**

DARRYL BROWN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:22-cv-00117-CDL
)	
CENTRAL OF GEORGIA RAILROAD)		
COMPANY; NORFOLK SOUTHERN)		
RAILWAY COMPANY; NORFOLK)		
SOUTHERN CORPORATION.)		
)	
Defendants.)	

**PLAINTIFF’S NOTICE OF INTENT TO USE
DEPOSITIONS AT TRIAL**

COMES NOW Plaintiff Darryl Brown, by and through counsel, to notify the Court and the Defendants of his intention to introduce deposition testimony at trial from the following witnesses: Jason Ault; Eric Peters; Tom Murphy; Carter Roberts; and Jason Kirkland. In compliance with the Court’s Order Setting Pretrial Conference (Doc. 35, paragraph 7, pp. 4-5), Plaintiff states the docket number of each complete deposition, the date the deposition was taken, the basis for using the deposition at trial under Rule 32(a), and the portions of the deposition that he intends to introduce at trial.

1. Deposition of Jason Ault.

The deposition of Jason Ault was taken on September 17, 2021. The docket

number of the complete deposition with exhibits and word index is Document 37.

Mr. Ault resides in Odenville, Alabama, which is more than 100 miles from the federal courthouse in Columbus, Georgia, where this case will be tried; therefore, under Rule 30(a)(4)(B), Plaintiff may use his deposition at trial for any purpose.

The page and line numbers for the portions of Mr. Ault's deposition that the Plaintiff intends to introduce are as follows:

Page 4/line 13 to page 7/line 12;

Page 7/line 19 to page 18/line 17;

Page 19/line 4 to page 32/line 18;

Page 33/line 2 to page 43/line 14;

Page 43/line 20 to page 46/line 22;

Page 47/line 14 to page 65/line 18;

Page 66/line 3 to page 86/line 9;

Page 86/line 17 to page 89/line 18;

Page 90/line 7 to page 91/line 12;

Page 92/line 2 to page 93/line 5;

Page 93/line 16 to page 95/line 18;

Page 97/line 8 to page 99/line 17;

Page 101/line 10 to page 108/line 3;

Page 109/line 12 to page 113/line 16;

Page 119/line 1 to page 121/line 3;

Page 122/line 19 to page 123/line 16;

Page 125/line 1 to page 134/line 6; and

Page 138/line 4 to page 139/line 19.

2. Deposition of Eric Peters.

The deposition of Eric Peters was taken on January 7, 2022. The docket number of the complete deposition with exhibits and word index is Document 38. Mr. Peters resides in Pennsylvania, which is more than 100 miles from the federal courthouse in Columbus, Georgia, where this case will be tried; therefore, under Rule 30(a)(4)(B), Plaintiff may use his deposition at trial for any purpose. The page and line numbers for the portions of Mr. Peters' deposition that the Plaintiff intends to introduce are as follows:

Page 5/line 17 to page 6/line 5;

Page 7/line 10 to page 8/line 3;

Page 8/line 8 to page 13/line 19;

Page 14/line 22 to page 18/line 7;

Page 18/line 13 to page 20/line 7;

Page 21/lines 14 to 19;

Page 22/line 23 to page 23/line 19;

Page 24/lines 11 to 17;

Page 24/line 22 to page 27/line 4;

Page 27/line 25 to page 28/line 17;

Page 29/line 21 to page 32/line 24;

Page 33/line 16 to page 34/line 19;

Page 36/line 24 to page 37/line 11;

Page 37/line 22 to page 52/line 11;

Page 52/line 19 to page 55/line 17;

Page 56/line 4 to page 62/line 16;

Page 63/lines 1 to 6;

Page 63/line 10 to page 65/line 22;

Page 66/line 23 to page 84/line 12;

Page 85/line 14 to page 97/line 4; and

Page 101/lines 5 to 21.

3. Deposition of Tom Murphy.

The deposition of Tom Murphy was taken on December 14, 2021. The docket number of the complete deposition with exhibits and word index is Document 39. Mr. Murphy resides in Pennsylvania, which is more than 100 miles

from the federal courthouse in Columbus, Georgia, where this case will be tried; therefore, under Rule 30(a)(4)(B), Plaintiff may use his deposition at trial for any purpose. The page and line numbers for the portions of Mr. Murphy's deposition that the Plaintiff intends to introduce are as follows:

Page 5/lines 12 to 22;

Page 5/line 25 to page 6/line 2;

Page 6/lines 6 to 12;

Page 14/line 17 to page 16/line 10;

Page 18/lines 5 to 10;

Page 18/line 15 to page 19/line 15;

Page 24/line 10 to page 26/line 19;

Page 27/lines 8 to 13;

Page 27/line 21 to page 28/line 16;

Page 29/lines 1 to 12;

Page 29/line 16 to page 30/line 2;

Page 31/line 8 to page 32/line 3;

Page 38/lines 6 to 13;

Page 40/line 24 to page 41/line 13;

Page 42/line 1 to page 45/line 7;

Page 45/lines 17 to 25;

Page 46/lines 13 to 20;

Page 48/line 8 to page 49/line 7;

Page 49/line 15 to page 50/line 17;

Page 51/line 24 to page 52/line 5;

Page 52/lines 13 to 22;

Page 53/line 13 to page 54/line 1;

Page 60/line 1 to page 63/line 20;

Page 65/line 20 to page 67/line 7;

Page 67/line 22 to page 68/line 3;

Page 70/line 7 to page 71/line 7;

Page 71/line 22 to page 72/line 1;

Page 72/lines 13 to 22;

Page 74/lines 7 to 12;

Page 77/lines 8 to 24;

Page 82/lines 11 to 14;

Page 82/lines 21 to 25; and

Page 83/line 14 to page 84/line 5.

4. Deposition of Carter Roberts.

The deposition of Carter Roberts was taken on December 8, 2021. The docket number of the complete deposition with exhibits and word index is Document 40. Mr. Roberts resides in Wetumpka, Alabama, which is believed to be within 100 miles of the federal courthouse in Columbus, Georgia; however, Plaintiff does not have Mr. Roberts under subpoena at this time. If Plaintiff is unable to procure Mr. Roberts' attendance by subpoena, Plaintiff should be allowed to use his deposition at trial pursuant to Rule 30(a)(4)(D). The page and line numbers for the portions of Mr. Roberts' deposition that the Plaintiff would introduce are as follows:

Page 5/lines 23 to 24;

Page 6/lines 18 to 19;

Page 7/lines 19 to 20;

Page 8/lines 5 to 11;

Page 12/lines 6 to 9;

Page 13/line 1 to page 16/line 20;

Page 17/line 6 to page 18/line 17;

Page 19/line 11 to page 22/line 19;

Page 23/line 8 to page 24/line 2;

Page 24/line 19 to page 34/line 25;

Page 35/line 19 to page 36/line 9;

Page 36/lines 12 to 25;

Page 37/line 4 to page 40/line 8;

Page 40/line 21 to page 50/line 10;

Page 50/line 16 to page 60/line 1;

Page 61/line 17 to page 64/line 2;

Page 64/line 13 to page 65/line 9;

Page 66/lines 3-19;

Page 67/lines 4-10;

Page 67/line 23 to page 70/line 4;

Page 70/lines 12 to 24;

Page 71/line 6 to page 75/line 9;

Page 75/line 23 to page 76/line 4 [through “answer”]; and

Page 76/line 14 to page 78/line 1.

5. Video Deposition of Jason Kirkland.

The video deposition of Jason Kirkland was taken on April 24, 2023. The docket number of the complete deposition transcript with exhibits and word index is Document 41. Mr. Kirkland resides in Valley, Alabama, which is within 100

miles of the federal courthouse in Columbus, Georgia, where this case will be tried; however, Plaintiff does not have Mr. Kirkland under subpoena at this time. If Plaintiff is unable to procure Mr. Kirkland's attendance by subpoena, Plaintiff should be allowed to use his deposition at trial pursuant to Rule 30(a)(4)(D). Also, use of Mr. Kirkland's video deposition may be appropriate under the "exceptional circumstances" provision of Rule 30(a)(4)(E). Mr. Kirkland is the General Manager for Rail Operations for Genessee & Wyoming which owns and operates short line railroads throughout the country. Mr. Kirkland travels extensively for his work and it is unknown at this time whether he can be available to testify live at trial without undue hardship. Once we have a trial date, we will contact him through Genessee & Wyoming's counsel to discuss his availability. If use of Mr. Kirkland's deposition is necessary, the page and line numbers for the portions that Plaintiff intends to present are as follows:

Page 8/line 11 to page 34/line 14.

BURGE & BURGE, P.C.

s/ F. TUCKER BURGE, SR.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2024, I filed the above and foregoing with the Clerk of Court using the CM/ECF System which will send electronic notification of such filing to the following individuals: John M. Graham, john.graham@phelps.com, and kenneth.boyles@phelps.com, Kenneth Boyles, Phelps Dunbar LLP, 2001 Park Place North, Suite 700, Birmingham, AL 35203.

s/ F. TUCKER BURGE, SR.

F. TUCKER BURGE, SR.